IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02/09/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL REVISION CASE NO.603 of 2003
and
Crl.M.P.No.3658 of 2003

Dr.Elangovan
Medical Officer,
Government Hospital,
Gingee,
Villupuram District. ... Petitioner

-Vs-

1. Jayabalan
2. State by
Inspector of Police,
C.B.C.I.D.,
Villupuram. ... Respondents

The above Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure as stated therein.

For petitioner : Mr.Mr.M.P.Umachandra Prakash.

For Respondent No 1 : Mr.M.S.Kandasami

For R2. : Mr.A.N.Thambidurai,
Govt.Advocate (Crl.side)

:O R D E R

The petitioner who is P.W.11 in S.C.No.126 of 2002 has filed the above Criminal Revision Case against the order dated 9.4.2003 made in Crl.M.P.No.7 of 2003 in S.C.No.126 of 2002 by the Court of Additional Sessions Judge,(Fast Track Court No.II), Tindivanam on grounds that the learned Sessions Judge has erroneously passed orders to implead the petitioner herein as an accused in S.C.No.126 of 2002; that the learned Judge has failed to consider the point that for every criminal offence punishable under I.P.C., there should be criminal intention i.e. Mens rea but in this case there is no such Mens rea as warranted by the Criminal Procedure Code and as well as Indian Penal Code and that the learned Judge ought not to have taken the petition under Section 319 of Cr.P.C. on her file; that the learned Judge has

failed to consider that the petitioner herein as P.w.11 in this case has already deposed as a prosecution witness and that the petition filed under Section 319 of Cr.P.C. is an after-thought of the first respondent herein in order to drag on the proceedings; that the learned Judge has analysed the counter statement filed by the petitioner herein as well as the State in improper manner since the petitioner herein at the time of making entries in Ex.P.10 series on the request of the first respondent herein was not aware of the occurrence that took place in the Sub Jail and in such absence of knowledge and intention the act of the petitioner herein cannot be termed an offence falling under Sections 218, 466 and 477-A of the I.P.C.; that the learned Judge has failed to consider the fact that the petitioner has already been placed under suspension and proceeded against for dereliction of duty in a departmental enquiry which is going on and impleading the petitioner as an accused in the above Sessions case is a clear cut case falling under the doctrine of double jeopardy which is barred under Section 30 0 Cr.P.C.; that the learned Judge has filed to consider that there is no substantial evidence produced by the first respondent; that the learned Judge further has failed to consider that in the normal course ill-health prisoners are brought to the duty doctor by the warder of the jail and get signature from the duty doctor; that in any event the order passed by the learned Judge have to be quashed. On such grounds the petitioner would pray for the relief extracted supra.

2. During arguments, the learned counsel appearing on behalf of the petitioners would only reiterate the grounds raised in the above Criminal Revision Case with no new facts or circumstances or law having brought forth praying for the relief sought for in the petition stating that in reply to the petition, from the lower Court, the petitioner herein has submitted before the court below that he was not aware of the occurrence that took place in the Sub-jail, Gingee on 29th and 30th October, 2001; that on 1.11.2001 when he was busy with hospital work, the first respondent herein came to his office with the 'IN' and 'OUT' register and requested to sign the same stating that all the prisoners were in good health, trusting which he made entries in Ex.P.10 series in order to oblige them; that the act was only dereliction of duty for which he had already been placed under suspension and the enquiry was pending and at this stage belatedly such of having examined 52 witnesses of prosecution, this petition filed would only lead the dragging of the proceeding and to waste the precious time of the court and hence would pray to dismiss the same.

3. On the part of the learned Government Advocate on the Criminal side, he would sail along with the order of the lower Court which is impugned herein and would further point out that on a petition filed by the first respondent who is the second accused in the case in S.C. No.126 of 2002 stating that this petitioner has been examined as P.W.11 in the above Sessions case deposing to the effect that in the 'IN' and 'OUT' register maintained in the Sub-jail, Gingee he has made entries in Ex.P.10 series on 1.11.2001 as if he visited the Sub-jail Gingee on 30.10.2001 and 31.10.2001 without actually visiting the Subjail, Gingee and looking into the health conditions of the prisoners as required by law and therefore, he being a public servant framed incorrect record, forging the public register and using it as genuine, further falsifying the accounts therein and has committed the offences punishable

under Sections 218, 266 and 477A I.P.C. and therefore, he ought to have been impleaded by the prosecuting agency as an accused in the above case for the commission of the said offences and that petition has been filed under Section 319 of Cr.P.C. praying to include the petitioner herein as accused in S.C.No.126 of 2002 on the file of the Court below.

4. The learned Government Advocate would further submit that the lower Court has properly dealt with the subject matter and has legally arrived at the conclusion to accept the contentions of the petition filed by the first respondent herein under Section 319 of Cr.P.C. and has ordered impleading of the petitioner as an accused rightly and there is absolutely no reason for either quashing or setting aside the order passed by the court below and would pray to dismiss the above Criminal Revision Case.

5. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the legal questions raised on the part of the petitioner are that there was no Mens rea which is an inevitable ingredient for proceeding against the petitioner in the manner ordered by the court below for the offences contemplated against him under Sections 218, 466 and 477A of the I.P.C. and that the learned Judge ought to have entertained the petition filed under Section 319 of Cr.P.C.

6. Section 218 I.P.C. deals with public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture Section 466 I.P.C. deals with forgery of record of Court or of public register etc. and Section 477A deals with falsification of accounts that is wilfully and with intent to defraud, destroys, alters, mutilates or falsifies any book, electronic record paper, writing, valuable security or account.

7. All the above three sections are dealing with forging or tampering or altering or falsifying the official records and therefore, the case pertaining to the petitioner is mostly borne by records and whether the offence charged bears Mens rea or not has been preliminarily ascertained by the Court and for such offences whether it is regarding Mens rea or the actus rea, since the defence of proof would be able to be determined only on trial and therefore, on a prima facie case being made out, the trial Court has rightly arrived at the conclusion that the above offences have been made out against the petitioner on the face of the petition filed by the first respondent and hence this Court is not able to find any reason to differ with the trial Court on this point.

8. Regarding the second point that the petitioner has already deposed as a witness i.e. as P.W.11, it is not an impediment in making him an accused, particularly under Section 319 of Cr.P.C. whereunder if sufficient materials are made available in evidence at the time of trial any one could be made an accused and therefore, this point is also decided against the petitioner.

9. The next and last important legal point that is raised on the part of the petitioner is that since departmental enquiry has been initiated for dereliction of duty making him an accused in the above Sessions Case would only attract the doctrine of double jeopardy as enshrined under Section 300 Cr.P.C. Section 300 Cr.P.C. deals with this aspect of law wherein when a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, and while such conviction or acquittal remains in force, shall not be liable to be tried again for the same offence, nor on the same set of facts for any other offence. Time and again by the upper forums of law particularly by the Hon'ble Apex Court it has been unequivocally held that a departmental proceedings initiated and carried on for one and the same offence is not a bar for a criminal case either registered or tried by the criminal court of law for the criminality committed on the part of the accused and that both the proceedings could side by side be carried on to attain their logical ends. There are also judgments which have been pronounced at later stages to the effect that when the criminal proceeding is initiated the departmental proceeding could be stayed pending disposal of the criminal case, but this proposition has to still to gain strength since contrary judgments have also been coming forth and therefore since conditions are still fluid as it is it has to be ascertained that a departmental proceeding initiated is not at all a bar for including the petitioner as an accused in the Sessions Case.

10. Since all the legal points are answered in the negative as above and against the petitioner, it has to be found out whether factually the learned Sessions Judge has dealt with the subject so as to arrive at the conclusion that she has arrived at?

11. A careful perusal of the order passed by the learned Sessions Judge would clearly indicate while tracing the facts pleaded on either side and framing the point for consideration whether P.W.11 the petitioner herein has to be impleaded as accused in S.C.No.126 of 2002 and dealing with the said point which is the only point for consideration and determination and having its own discussions on all the facts and circumstances put forth by both sides, the court below has ultimately arrived at the unshakable conclusion that it is quite evident that the petitioner herein has admitted the entries made in the 'IN' and 'OUT' register and knowingly as a duty doctor of the Sub-jail has failed to perform his duty and has helped A2 in the commission of the crime and has thereby committed the offence punishable under Sections 218, 466 and 477A of the I.P.C. being a public servant in the making of entries in the public register and therefore, the Court below finds that there are sufficient grounds by his own evidence to implead him as an accused in S.C.No.126 of 2002, thus allowing the Crl.M.P.No.7 of 2003 made in the said Sessions Case.

12. absolutely, no inconsistency or any legal infirmity or error of law or perversity seems to have crept into the well considered and merited order passed by the Court of Additional Sessions Judge (Fast Track Court No.II), Tindivanam and hence the following order:

In result,

(i) the above Criminal Revision Case does not merit acceptance and the same is dismissed as such;

(ii) the order dated 9.4.2003 made in Crl.M.P.No.7 of 2003 in S.C. No.126 of 2002 by the Court of Additional Sessions Judge(Fast Track Court No.II), Tindivanam is hereby confirmed;

(iii) Consequently, Crl.M.P.No.3658 of 2003 is also dismissed.

Index:Yes
Internet:Yes

gr.

To
1. The Additional Sessions Judge(Fast Track Court No.II), Tindivanam.
2. The Inspector of Police, C.B.C.I.D., Villupuram.